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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/283,676 | 04/01/1999 | KARL G. AUERBACH | CISCP074 | 1300 |

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EXAMINER

NAJJAR, SALEH

ART UNIT PAPER NUMBER

2157

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/283,676

Applicant(s)

AUERBACH, KARL G.

Examiner

Saleh Najjar

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: None.

Claim(s) objected to: 12.

Claim(s) rejected: 1-11 and 13-35.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: see attachment


SALEH NAJJAR
PRIMARY EXAMINER

Continuation of 2. NOTE: The amendment to claim 23 will not be entered because the deletion of bandwidth from the claim narrows and changes the scope of the claim.

1. This is responsive to the after final amendment filed on February 10, 2003.

Claims 1-35 are pending.

2. Applicant's arguments filed February 10, 2003 have been fully considered but they are not persuasive. The applicant's arguments are summarized below and followed by the Examiner's response.

In the response, the applicant argues in substance that; **A)** the distance metrics taught by the Rabinovich reference do not read on the proximity concept in the present claims and therefore fails to teach the claimed language of claim 1; **B)** although the Rabinovich reference discloses cost of communication provided by bandwidth and latency it does not suggest that the cost comprises any other specific measures; **C)** with respect to the amendment to claim 23, Bozman does not teach replacement cost other than bandwidth and latency;

In response to **A)**; the distance metrics taught by Rabinovich meet the scope of the claimed limitation of proximity between network nodes;

In response to **B)**; the cost of communication taught by the Rabinovich reference does meet the scope of the claimed language of cost of communication, there is no other specific cost measures provided by the claimed language, the claim is broad and the reference meets the scope of the claimed language;

in response to **C)**; the argument presented in view of the Bozman reference is moot because the amendment of the claim will not be entered;

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saleh Najjar whose telephone number is (703) 308-7613. The examiner can normally be reached on Monday-Friday from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Ario Etienne*, can be reached on (703) 308-7562. The fax phone number for this Group is (703) 308-9052.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600. The fax number for the After-Final correspondence/amendment is (703) 746-7238. The fax number for official correspondence/amendment is (703) 746-7239. The fax number for Non-official draft correspondence/amendment is (703) 746-7240.



Saleh Najjar

Primary Examiner / Art Unit 2157